

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.95 of 2009

(Arising out of Order-in-Appeal No.38/CE/B-I/2008 dated 12.12.2008 passed by Commr. (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar)

M/s Ballarpur Industries Ltd.

64, Forest Park,
Bhubaneswar-751009

Applicant

VERSUS

CCEx., Cus. & S.Tax, BBSR I

C.R.Building, Rajaswa Vihar,
Bhubaneswar 751010

Respondent

APPEARANCE :

None for the Appellant

Shri D. Halder, Authorized Representative for the Appellant

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR.C. J. MATHEWS, MEMBER (TECHNICAL)

FINAL ORDER NO.76389/2019

DATE OF HEARING : 26.09.2019

DATE OF DECISION : 26.09.2019

PER P.K.CHOUDHARY :

Heard both sides and perused the appeal records.

2. We observe that the lower appellate authority has not decided the appeal on merit, but have rejected the appeal on the ground of non-compliance with the requirement of Section 35F of the Central Excise Act, 1944.

3. We further observe that against the Stay Order No.95/Kol/2010 dated 15.03.2010, the appellants have deposited an amount of Rs.9.00 lakhs (Rupees nine lakhs only) towards pre-deposit in terms of Section 35F of the Act with SBI Main Branch, Bhubaneswar vide GAR 7 Challan No.00019 dated 22.04.2010. A photo copy of the said Challan has also been filed by the appellants. Since the lower appellate authority has

not decided the appeal on merit, it would be appropriate to remand the matter to the lower appellate authority for deciding the appeal on merit.

4. Since the appellants have already complied with the Stay Order dated 15.03.2010 of the Tribunal, the lower appellate authority need not insist any further pre-deposit. All issues are kept open. Needless to mention, a reasonable opportunity of hearing be granted to the appellants to present their case. Both sides are at liberty to produce evidences in their support.

5. In the result, the Appeal filed by the appellants is allowed by way of remand to the Commissioner (Appeals).

(Operative part of the order was pronounced in the open court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(C.J.Mathews)
Member (Technical)

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